

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

LYNNIE ROBERSON,

Defendant.

HONORABLE NANCY G. EDMUNDS

No. 21-cr-20285

MOTION HEARING

Detroit, Michigan - Thursday, June 30, 2022

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- - -

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1 Detroit, Michigan

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3 1:30 p.m.

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5 THE CLERK: Court calls 21-20285, United States
6 of America vs. Linnie Roberson.

7 Counsel, state your appearances for the record.

8 MR. SMITH: Good morning Your Honor. Jeremiah
9 Smith on behalf of the United States.

10 MS. MANNARINO: And good morning. Maria
11 Mannarino on behalf of Mr. Linnie Roberson, who is present
12 and stands to my left.

13 THE COURT: Good morning, everyone. Be seated
14 please.

15 You're welcome to remain seated when you address
16 the Court. If it's easier for you to do that, it's fine.
17 I know some people prefer to speak from the podium, and
18 that's fine, too, just as long as you can use a mic.

19 And I think my law clerk has told you, anyone who
20 is vaccinated is welcome to take off their mask.

21 We have two motions up this morning. Ms.
22 Mannarino, I believe they're both your motions. Motion in
23 limine to exclude proposed 404(b) evidence, and a motion
24 to exclude expert testimony and for a Daubert hearing.
25 Let's start with 404(b).

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1 MS. MANNARINO: At the Court's pleasure, but we
2 did discuss whether or not we could do the other motion
3 first, in order to accommodate the witness.

4 THE COURT: That's fine. Go ahead.

5 MR. SMITH: I defer to you, ma'am. Your motion,
6 as the Court indicated.

7 Your Honor, I'm prepared to call ATF Special
8 Agent Joe Nether to elicit testimony to lay the foundation
9 for his basis in expertise in narcotics trafficking.

10 THE COURT: That's fine.

11 MR. SMITH: Thank you. The government calls
12 Special Agent Joe Nether.

13 THE COURT: Raise your right hand, please.

14 Do you solemnly swear that the testimony you're
15 about to give in the matter here pending will be the
16 truth, the whole truth, and nothing but the truth, so help
17 you God?

18 THE WITNESS: I do.

19 COURT REPORTER: Spell your name, please.

20 THE WITNESS: Joseph, J-o-s-e-p-h; Nether,
21 N-e-t-h-e-r.

22 MR. SMITH: May I proceed, Your Honor?

23 THE COURT: You may.

24

25

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1 **DIRECT EXAMINATION**

2 BY MR. SMITH:

3 Q Agent Nether, where are you employed?

4 A I'm employed as a supervisory special agent with the
5 Bureau of Alcohol, Tobacco, Firearms and Explosives.

6 Q Commonly referred to as the ATF, sir?

7 A Yes.

8 Q How long have you been with ATF?

9 A Since the year 2001.

10 Q You mention that you're currently a supervisor. What are
11 your day-to-day responsibilities in that job?

12 A As a supervisor, I run a team of approximately six to
13 seven people that work their investigations typically on the
14 west side of Detroit. So we do anything from investigating
15 violent street gangs, to armed drug dealers, to shooters, by
16 doing CI buys, search warrants, things of that sort.

17 Q Special Agent Nether, prior to being in this supervisory
18 position, what type of investigations were you conducting for
19 the ATF?

20 A Prior to being a supervisor, my main type of
21 investigations involved racketeering cases against violent
22 street gangs in and around the City of Detroit, armed drug
23 dealers, drug dealers that robbed other drug dealers, armed
24 robbery crews. I worked murder for hire investigations, just
25 simple drug organizations, violent felons that possessed guns.

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1 Q Before we get into some of those specifics, I want to take
2 a step back then. What if any formal education do you have,
3 sir?

4 A I have a bachelor's degree from the University of Detroit
5 Mercy.

6 Q You mentioned some of the investigations that you've been
7 part of. I think it's fair to say that we all know today we're
8 here to talk about potential narcotics trafficking, as well as
9 the use of firearms involved in alleged narcotics trafficking.
10 So let me ask you this, sir, what specific training have you
11 received as an ATF agent in the areas of investigating
12 narcotics trafficking?

13 A Well, every agent, to include myself, does receive basic
14 narcotics and firearms training in the ATF Academy. I've also
15 gone on to go to a firearms trafficking school. Soon after I
16 got out of the academy, a couple years in getting out of the
17 academy, I've also been to a basic identification of narcotics
18 school for several days. I've also been in another narcotics
19 identification class when I was a member of the enhanced
20 undercover program. And then, in addition to that, obviously,
21 real world experience which I believe is more important than
22 what I learned in the classroom.

23 Q Before we get into that real world experience, let's talk
24 a little more about some of the training that you just
25 mentioned.

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1 These narcotics, specifically, schools, when
2 you're going through this program, are you instructed on the
3 importance of things such as the weight of narcotics that you
4 might be dealing with?

5 A Yes.

6 Q Why is that important to you as an investigator?

7 A Well, the importance when it comes to the weights are to
8 be able to distinguish when you're dealing with somebody who is
9 a user of narcotics as opposed to somebody who is a distributor
10 of narcotics, because if you're in a undercover capacity, which
11 a lot of these trainings that I've gone to and taught at, we
12 are trying to portray ourselves a certain way, so you have to
13 understand the different weights; when something is considered
14 personal, when something is considered distribution level, and
15 even how to break that distribution level down to sales on the
16 street.

17 So it's something where you have to learn all
18 aspects of narcotics trafficking, from the user, to the person
19 who is actually trafficking in narcotics.

20 Q Let me follow up on what you just mentioned there. You
21 indicated that even for street level trafficking you have to
22 understand how those weights can break down. How do you
23 differentiate between, say, a low level dealer versus maybe a
24 mid level street dealer, to someone who is much higher up in a
25 narcotics trafficking organization?

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1 A A lot of times you can figure that out just, I mean, a
2 weight is a big determining factor, and how much the person is
3 actually trafficking.

4 A lot of the times, my job function was to
5 actually meet with narcotics traffickers and have conversations
6 with these narcotics traffickers, so I was able, based on
7 conversations and based on what I was purchasing, able to
8 determine where they would fit in that scheme of whether or not
9 they're low, mid or high level, because I've purchased anything
10 from pretending to be a user of narcotics, to being a mid level
11 trafficker or middle man, and I've also portrayed myself as a
12 large scale distributor dealing with kilograms of cocaine.

13 Q Again, before we get into that specific experience, I want
14 to touch on one more piece of your training. You mentioned
15 that you have been part of the enhanced undercover program, is
16 that correct, sir?

17 A That's correct.

18 Q What type of training did you receive from that program
19 that would be relevant to our discussions today?

20 A So I was in that program from 2016 to 2018. Prior to
21 being a member of that program, I went to an advanced
22 undercover school where all of the, I guess, top undercover
23 agents from the country would come in to teach that school, and
24 they would put us through different scenarios. Each
25 scenario -- well, most of the scenarios were related to a drug

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1 dealer that had a firearm, and how to purchase narcotics from
2 that drug dealer or from a narcotics -- or from a firearms
3 trafficker and how to purchase those narcotics -- or that
4 firearm from that trafficker.

5 Based on the individuals that were teaching that
6 school, they would actually set up the scenarios based on
7 actual events that they participated in, deals that they
8 actually did. So every scenario that they would put us through
9 would actually be a real scenario.

10 Once you complete that advanced undercover
11 school, you are then given the opportunity to apply for the
12 enhanced undercover program, which I did. And again, they put
13 you through more scenarios, they ask you a ton of questions.
14 They put you in a room where they have three experienced
15 undercover agents just fire questions as you, see how you'll
16 handle them.

17 And then typically, I mean, they're -- I think
18 when I went through there were probably about 20 people that
19 applied, and only three people made it through. I was one of
20 those people.

21 When you answer the questions appropriately,
22 that's when you're given the opportunity to be in the program.
23 Then, once you're in the program, you are still required to go
24 through a training once a year where you again discuss
25 narcotics trafficking, firearms trafficking, the different

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1 types of methods utilized by different drug traffickers,
2 firearms traffickers. It's to keep you up to date on what's
3 going on.

4 And you're meeting with individuals from around
5 the country. At any time, there's probably 25 to 30 different
6 agents that are in this program in different divisions around
7 the country, so you are learning the different methods that are
8 happening in all these different states and divisions, and
9 that's something that, for the most part, we went through every
10 year. There were a couple that were missed based on funding,
11 but I've participated in several of those trainings.

12 Q Would it be fair to say that after your practical
13 experience working as an undercover officer that you've also
14 now instructed at some of these schools?

15 A Yes, I've been instructing for years now at the Advanced
16 Undercover School, which is where, like I mentioned, the school
17 prior to you getting into the undercover program. It's the
18 school where -- it's individuals that are already doing
19 undercover work, but we then go in and teach them and view them
20 doing scenarios, and critique them on different things that
21 they could do. And I, myself, have also come up with scenarios
22 based on real events that have taken place in my work to put
23 them through those scenarios.

24 So yes, I've been doing that training for -- I've
25 been training definitely for over a decade.

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1 Q Why, then, based on your experience as a student, as well
2 now as an instructor, are these scenarios involving narcotics
3 trafficking consistently also involving firearms?

4 A Because typically any narcotics trafficker that we are
5 investigating, they typically have firearms, and if they did
6 not have firearms, we would not be investigating them.

7 Q During the course of these trainings, did you learn
8 certain methods that you've applied in these undercover
9 operations?

10 A Absolutely.

11 Q Do you learn things like how to conduct an undercover buy
12 of narcotics?

13 A Yes, you learn what to say, the different terminology, the
14 prices that you should pay for certain weights of narcotics.
15 You -- because you're speaking with agents that are doing
16 things in other divisions, so we're able to bounce ideas off of
17 each other. I'm able to explain what I've seen, they're able
18 to explain what they've seen. So it's a way for us to stay on
19 top of what's happening when it comes to the world of narcotics
20 trafficking or armed narcotics trafficking.

21 And obviously, in addition to that, it's, you
22 know, we speak with our informants, as well, to make sure we're
23 up on what's going on in the areas that we work.

24 Q I'll ask you to expound on that briefly. When you speak
25 with an informant, what do you learn from them that might be

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1 relevant to why we're here today?

2 A So sometimes, you know, prices change, sometimes the
3 method in which -- and how people conceal narcotics change, the
4 different types of firearms that people sometimes would
5 traffic, a popular gun or the type of gun that would be used
6 for narcotics trafficking. I mean, sometimes those things
7 would change not too much, but those will be things that we
8 would debrief an informant on during each investigation once an
9 informant tells us about somebody who is allegedly involved in
10 narcotics trafficking just so we are up to date and making sure
11 that when we're investigating it that we're not doing anything
12 that would -- or that we would be doing things consistent with
13 how that person is operating.

14 Q I'll ask you, then, a hypothetical. For example, would a
15 debrief include something along the lines of how much currently
16 a heroin user is buying a half a gram of heroin for in the
17 greater Detroit area?

18 A So it could, because a lot of the times when we are
19 dealing with informants and we're having the informants make
20 the buy, we are typically having the informants buy user
21 amounts, and they're not typically portraying a drug
22 trafficker. It happens, but the majority of the time it's
23 going to be on a user level, and the reason that is, a lot of
24 informants that we are using are either former users of
25 narcotics or currently users of narcotics, and so that's kind

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1 of the position that they're in.

2 The times where we would -- the majority of the
3 times where we would then start purchasing more of -- more of
4 the trafficking level, or portraying a drug dealer, we would at
5 that point, not all the time, but typically we would have the
6 informant introduce an undercover, and that undercover would
7 try to purchase more narcotics to look more like they were on
8 the distribution level.

9 Q Thank you. Now let's talk about some of your specific
10 experience with buying these. Would it be fair to say that
11 you've been assigned to specific identifiable units that have
12 investigated low to mid level drug traffickers?

13 A Yes. Shortly after coming out of the academy, I was
14 assigned to the Downriver Area Narcotics Organization. I did
15 that for approximately two and-a-half years starting in 2002.

16 I was also on another task force that also dealt
17 with low level to mid level narcotics traffickers called the
18 CAT team out of Washtenaw County which was the Community Action
19 Team. I was actually on the ground level and helped create
20 that task force. That's still in existence today.

21 Q And the DRANO, the Downriver team you mentioned, that's
22 one of the Michigan State Police multi-jurisdictional task
23 forces, is that correct?

24 A That's correct.

25 Q That was from approximately 2003 to 2005?

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1 A Yes, it spanned about two and-a-half years.

2 Q When you were operating in that capacity, Special Agent
3 Nether, did you personally conduct undercover buys of
4 controlled substances?

5 A I did.

6 Q When you were operating in that capacity, did you also
7 oversee, as a supervisory agent, controlled purchases by
8 confidential informants?

9 A Not as a supervisor role, but I participated as a team
10 member that oversaw CI buys and UC buys of narcotics.

11 Q Were you involved in the debriefing of users of controlled
12 substances?

13 A Yes.

14 Q Were you also experienced, or did you receive experience
15 as a result of your investigations, in interviewing low to mid
16 level narcotics traffickers either prior or post their arrest?

17 A Yes.

18 Q Also during the course of these investigations did you
19 assist or lead, yourself as an officer in charge of a case, in
20 search warrants related to these investigations of low to mid
21 level dealers?

22 A Yes.

23 Q Turning your attention, then, to the CAT team you
24 mentioned in Washtenaw County. Did you have any experience
25 when you were in that position with undercover purchases?

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1 A Yes.

2 Q What types of drugs do you recall did you purchase when
3 you were in Washtenaw County?

4 A Crack cocaine, cocaine, heroin, ecstasy, marijuana. Those
5 are the different types of narcotics that I would personally
6 purchase when I was a member of that team.

7 Q Let's talk about, again, that experience with any kind of
8 confidential informants and controlled purchases within -- did
9 you have experience with that with the CAT team?

10 A Yes. When I was involved with the CAT team, I did obtain
11 an undercover house, I wired up the house with video and
12 recording equipment and moved two confidential informants into
13 this house in the West Willow area of Ypsilanti, where the
14 informants on a daily basis would meet with both users and
15 dealers and record all of their interactions, and at times make
16 purchases from them of guns and drugs.

17 Q As a result of this specific investigation, did you learn
18 information such as the importance of prices and how much users
19 were buying, what was an average use amount, things of that
20 nature?

21 A Absolutely.

22 Q Let's transition then to your experience in the Enhanced
23 Undercover Program for the ATF. Did you operate in an
24 undercover capacity and purchase narcotics while acting in that
25 role?

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1 A Yes.

2 Q Can you outline for the Court some of your experience in
3 the purchase of narcotics while operating under the EUP?

4 A So some of the cases that I've been involved in as a
5 member of the EUP, Enhanced Undercover Program, I've worked in
6 multiple storefront locations, specifically like smoke shops,
7 running it as a business, working six to eight hours a day,
8 where on a daily basis I would be speaking with drug users,
9 drug dealers, gun traffickers, in different states. One was in
10 Portland, one was in Georgia.

11 I actually operated a barber shop in the City of
12 Detroit on the west side of the city where, again, daily, I
13 would be speaking for hours on end with different users,
14 dealers, gun traffickers. We would make purchases two to three
15 times a day, sometimes more. I've also been tasked with going
16 to California in the Stockton, California area for four months,
17 where I did undercover, where I was part of a team of
18 undercover agents where we made six to eight purchases of drugs
19 and guns a day. I would specifically be responsible for
20 probably about two buys every single day, Monday through
21 Friday.

22 I was in a storefront that was a clothing
23 store/tobacco shop in Louisville, Kentucky for six months where
24 I would work Monday through Friday, again buying from,
25 actually, in that location probably mostly low level

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1 traffickers as well as users that were trying to sell
2 narcotics, as well. There was only a couple times where high
3 level traffickers or mid level traffickers came to that
4 location.

5 I've also portrayed myself as a multiple kilo
6 dealer as, I guess, a drug mule to infiltrate drug robbery
7 crews. I've done at least 10 different cases where I've met
8 with robbery crews, that even times we've known these guys to
9 kill people to steal their narcotics, and I would basically
10 discuss with them robbing other dope dealers, drug dealers, and
11 we would arrest those individuals when they were conspiring to
12 rob those drug dealers.

13 I've participated as the UC on, in the City of
14 Detroit for narcotics crews that had 10-plus members. One was
15 called the Joy Boys Crew, called the 952 Boys where I probably
16 arrested more than 10 individuals for selling directly hand to
17 hand with me crack cocaine.

18 Those are just some of the bigger cases, and I've
19 had a ton of a lot smaller cases where they're just, you know,
20 meeting with certain individuals that aren't necessarily part
21 of a drug crew or organization, but might be an individual
22 selling.

23 Q Thank you. I think we've outlined a pretty sufficient
24 basis as far as your general experience. Let me ask you some
25 specifics.

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1 You just mentioned that in one of these positions
2 as a member of the Enhanced Undercover Program, that you were
3 buying mostly from either drug users or low level dealers, is
4 that correct?

5 A Mostly, yes.

6 Q What did you learn as to the common purchase or use
7 amounts by a drug user?

8 A So typically, a drug user is going to purchase
9 approximately -- and this isn't going to be the same every
10 time, but approximately 0.2 grams of crack cocaine which would
11 be considered like one rock. It could be a little bit smaller,
12 could be a little bit bigger. That rock would be about \$20.
13 It could be more depending on where you live, where you're
14 purchasing from, but that's what I learned would typically be a
15 user amount of narcotics.

16 Heroin would be around the same thing. It could
17 be even a smaller amount.

18 And then, when it came to drug traffickers,
19 especially when I portrayed a drug trafficker, we would
20 typically start with purchasing maybe 3 grams of crack cocaine,
21 7 grams of crack cocaine, up to an ounce. So typically my
22 purchases would be somewhere between 3 grams and an ounce when
23 I was trying to portray a drug trafficker.

24 Q Few things that you mentioned there that I want to dig
25 into. Let's talk about the average use amount first. When you

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1 indicate that the average user was purchasing about 0.2 grams,
2 when you have portrayed a user, did you purchase similar
3 amounts?

4 A Yes. I haven't portrayed a user all that often. Just
5 based on my appearance, it is a little more difficult based on
6 what a user typically looks like that I've observed, but when I
7 have portrayed myself as a user, I have purchased as small as
8 one rock of crack cocaine or two rocks of crack cocaine, yes.

9 Q Based on your own experience as well as your discussions
10 with drug users, why is it that users of crack cocaine only
11 purchase this, maybe, two tenths of a gram amount?

12 A Well, crack cocaine is very addictive. The high from
13 crack cocaine typically lasts 5 to 15 minutes, and the effects
14 of that high typically make that user want to get that high
15 again. So typical users of crack cocaine have trouble holding
16 down jobs or any responsibility, and they usually spend all of
17 their money on narcotics, and if they can't come up with money,
18 they will trade whatever items they can in exchange for those
19 narcotics. They will steal from family members to obtain those
20 narcotics. So yeah, when it comes to a user, they're trying to
21 get their hands on whatever they can.

22 Q You mention that when you were operating in a capacity as
23 a low level dealer, you purchased amounts ranging from 3 grams,
24 7 grams, to an ounce itself. When you're dealing with
25 something like 3 grams of crack cocaine, is there even specific

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1 terms or vernacular on the street that's used for that amount?

2 A Well, I would call it a ball. So which is like an eighth
3 of an ounce, and typically an eighth of an ounce is 3.5 grams.
4 That's when you're dealing with powder cocaine. When you're
5 dealing with crack cocaine, it's 3 grams.

6 There's different weights for the different type
7 of narcotic, and it's just based off of the cutting agents and
8 what happens when you actually turn powdered cocaine into crack
9 cocaine. So an ounce of powdered cocaine is 28.3 grams, but if
10 you're purchasing an ounce of cocaine, it's typically about 24
11 grams for the crack cocaine because a few grams burn off. So
12 yeah, it would typically be about 3 grams, and the terminology
13 would usually be a ball.

14 Q In this instance, we have approximately 7.5 grams of crack
15 cocaine. Would there be a type of term or specific way you
16 might request that if you were acting as either a user or a low
17 level dealer?

18 A I mean, you would just -- I would just say a quarter, and
19 typically if you say a quarter, they're going to think you're
20 talking about a quarter of an ounce.

21 Q You mentioned previously that you had purchased not as
22 often as maybe you might have purchased more weight consistent
23 with, say, a low or mid level dealer, but you had purchased use
24 amounts before.

25 Based on your experience as an undercover, as

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1 well as supervising confidential informants, what's the typical
2 price that someone might pay for that .2 grams, or somewhere
3 around that amount of crack cocaine?

4 A I mean, typically, for a one use of crack cocaine you're
5 going to pay anywhere between -- and again, it's regional. It
6 could be based on being in the city, the suburbs, but it's
7 going to be anywhere from 10 to \$40. I would say the average
8 is \$20.

9 Q Fair to say you've operated here in the Detroit area?

10 A Yes.

11 Q Based on your own experience here, what would be the
12 average price of approximately .2 grams?

13 A \$20.

14 Q I want to somewhat as a whole wrap up your experience
15 here. Can you estimate for the Court approximately how many
16 undercover controlled purchases you have handled yourself?

17 A Me personally, as the undercover purchasing narcotics, I
18 would say easily a couple hundred.

19 Q All right.

20 A I mean, I had some operations where I was doing it
21 multiple times a day for months on end. The longest I've been
22 undercover is 11 out of 12 months away from home, so I would
23 say a couple hundred times, easily.

24 Q When was the most recent time that you've purchased
25 narcotics yourself?

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1 A Last time I actually purchased narcotics was in 2018.

2 Q As a supervisory agent, are you still involved with the
3 management and outlining of plans of operations by your own
4 agents who are currently conducting these types of buys?

5 A Yes. For my team, I would be the on-scene commander. I
6 would have to review all the operational plans, all the
7 reports, so I have to see what the plan is, and have to approve
8 that before we actually go out and do that operation.

9 Q In an undercover capacity, how many times, if you can
10 estimate for the Court, please, have you sold -- fake drugs, of
11 course, but sold in a capacity as a low to mid-level dealer?

12 A Well, they thought we were selling it, but we had to
13 arrest them, and that probably happened 10 to 15 times where I
14 have sold drugs and arrested the individual at the time of the
15 sale.

16 Q And when was the most recent time that you've participated
17 in that form of operation?

18 A That was much longer ago, and I would have to
19 approximately -- like 2014 maybe.

20 Q Thank you. Approximately how many times have you as the
21 agent in charge conducted a controlled purchase of narcotics by
22 a confidential informant?

23 A That would also be a couple hundred. I mean, I had a case
24 last year that I ran as a supervisor, where during one case I
25 at least had an informant make 45, approximately 45 purchases

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1 of narcotics from individuals. And actually, during that
2 occasion, the informant that we were using was never a drug
3 dealer, so I actually had to talk him through how to actually
4 portray a drug dealer, what amounts to buy, because he just
5 wasn't comfortable with it. But I mean, that alone was 45
6 times just last year as a supervisor, so I would say at least a
7 couple hundred.

8 Q These controlled purchases involving criminal informants,
9 or confidential informants, rather, were any of them for the
10 purchase of crack cocaine?

11 A Yes, absolutely.

12 Q Have you ever been involved in the exchange of firearms
13 for drugs?

14 A I have.

15 Q And you yourself, when operating in an undercover
16 capacity, have you ever had to deal with people involved with
17 narcotics trafficking who also were doing this in conjunction
18 with possessing a firearm?

19 A Most of the time, the individuals that I was purchasing
20 off of did possess firearms, not necessarily that I could
21 always see on their person, because sometimes those guns would
22 be hidden, but typically by the end of the investigation we
23 usually end it with a search warrant or a buy bust, and that's
24 when we would find firearms.

25 ATF does not like to get involved in

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1 investigations that are not related to guns, but most of the
2 time the guys we're dealing with, they typically have firearms
3 when they're selling narcotics.

4 Q Thank you. You mentioned that during the course of your
5 career you've dealt with, I believe you said hundreds of
6 controlled substance users, is that correct?

7 A Yes.

8 Q Based on your personal experience interviewing users of
9 crack cocaine, debriefing confidential informants involving
10 crack cocaine buys, is it common for them to be in possession
11 of large amounts of currency?

12 A No.

13 Q What's your understanding as to why not?

14 A It's, you know, based on my earlier testimony, as soon as
15 they get money, they're spending it on more drugs, because like
16 I said, crack cocaine, for instance, the high does not last
17 that long, but the effects of it make you want to get that high
18 again, so you're spending all of your money. So every time
19 I've come in possession of users, whether it's typically
20 interviewing them at search warrants or just speaking with them
21 while I was in an undercover capacity at different store fronts
22 and stuff like that, I mean, these are people that don't have
23 money to buy a pack of cigarettes in the stores that I've been
24 in, where sometimes I'm giving it to them for free because they
25 just have nothing.

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1 I've ran into users that just to get narcotics
2 have actually had their teeth pulled. I remember specifically
3 a female that had her entire top row of teeth pulled just so
4 she could go get a prescription for pills so she could go out
5 and use them and sell them. So these are people that literally
6 have nothing in most cases.

7 Now, I'm sure there's exceptions to that rule,
8 but every single person that I've run into, it's typically the
9 same.

10 Q When interacting with folks who have a struggle with the
11 use of crack cocaine, have you found it common that they're in
12 the possession of some form of use paraphernalia?

13 A Yes. Even running into a user that does not have
14 narcotics on their person, they typically always have either a
15 crack pipe, if crack is their drug of choice, they'll have a
16 needle if heroin is their drug of choice, again, a char boy if
17 crack is their drug of choice.

18 So typically, they're always going to have the
19 paraphernalia associated with the drugs they're doing. They're
20 typically not going to leave the house, just like you wouldn't
21 leave the house without your wallet.

22 Q Want to transition now to the other drug involved in this
23 case, which is powdered cocaine. You've reviewed the materials
24 associated with this, is that fair?

25 THE COURT: Mr. Smith, how long do you anticipate

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1 this is going to go?

2 MR. SMITH: I would say my questioning, Your
3 Honor, would be maybe another 10 to 15 minutes. And I beg
4 the Court's pardon, I thought Ms. Mannarino's request was
5 for just this, to establish his experience and training
6 and be able to portray to the Court his expertise.

7 THE COURT: I've got another matter at 11:30. I
8 can push that off to 12:00, but we've got to be done here
9 by 12:00.

10 MR. SMITH: I will finish quickly, Your Honor.

11 MS. MANNARINO: Judge, I'm prepared to make a
12 motion at this point that I appreciate the agent's
13 experience, but this doesn't have anything to do with this
14 case, and this is not anything that is not within the
15 purview of the jury to decide. So, you know, bringing in
16 an expert under these circumstances to tell the jury
17 something that is within their purview to know and
18 understand, I think is inappropriate. You know, this is
19 not an area for expert testimony. The jury knows and
20 understands.

21 THE COURT: Why don't you just make a proffer,
22 Mr. Smith, of what the testimony would be, and then we'll
23 have Ms. Mannarino make her motion.

24 MR. SMITH: Certainly, Your Honor.

25 THE COURT: We've still got the 404(b) one to

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1 discuss, as well.

2 MR. SMITH: Absolutely, Judge. Would you like to
3 excuse the witness now?

4 THE COURT: Yes. You may be excused.

5 THE WITNESS: Okay. Thank you.

6 (Witness excused 10:56 a.m.)

7 MR. SMITH: May I proceed?

8 THE COURT: You may.

9 MR. SMITH: Your Honor, as the testimony would
10 proceed, the government proffers that Special Agent Nether
11 would continue to outline for the Court that, where I was
12 going to specifically there, the powder cocaine itself,
13 one and-a-half grams, could arguably be for use amounts.
14 However, we were then going to transition into the
15 collective here, which is the one and-a-half grams of
16 powdered cocaine, the seven and-a-half grams of crack
17 cocaine, the fact that it was individually packaged, that
18 it was concealed in conjunction with a firearm, that those
19 items were concealed specifically in Mr. Roberson's groin
20 area, and that, also, Mr. Roberson had over a thousand
21 dollars of U.S. currency on him. Approximately \$600 of
22 that was in \$20 bills.

23 Special Agent Nether was then going to outline
24 that for the Court, and the reason why that's important,
25 Judge, is because the average juror, as the Sixth Circuit

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1 indicates, and contrary to what Ms. Mannarino says, does
2 not have this knowledge or experience. It's outside of
3 the ken of the average juror; narcotics trafficking.
4 That's why the Sixth Circuit specifically has indicated
5 that drug trafficking experts are the type of expert that
6 has been overwhelmingly used in cases like this, and it's
7 because the average juror does not know about, two tenths
8 of a gram are use amounts for crack cocaine versus seven
9 and-a-half grams here that's one large chunk, that's
10 consistent with low to mid-level dealing.

11 So that is where Special Agent Nether's testimony
12 would go, Your Honor.

13 THE COURT: Okay. Thank you very much.

14 Ms. Mannarino.

15 MS. MANNARINO: Again, I understand what the
16 prosecution is trying to do. What they're trying to do
17 is, you know, convince a jury that this is something other
18 than what it is, and I think the case law, and I'm not
19 going to go through it, it's all in my motion, I trust the
20 Court has read it, I think the case law supports the fact
21 that this is exactly the type of information that is --
22 let me find -- where any probative value is substantially
23 outweighed by the danger of unfair prejudice and will lead
24 the jury to speculate and thus mislead the trier of fact.
25 Testimony as to such matters is not beyond the ken of the

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1 jury and thus are not appropriate subject of expert
2 testimony.

3 THE COURT: Mr. Smith.

4 MR. SMITH: Thank you, Your Honor.

5 Your Honor, I would just outline briefly for the
6 Court the analysis under 702; specifically, when you're
7 talking about specialized knowledge such as what Special
8 Agent Nether has.

9 First, is the expert qualified? I don't think
10 there's anything in dispute here about his qualifications.
11 Second is whether the proposed testimony is relevant. And
12 third is whether the proposed testimony is reliable. The
13 Sixth Circuit has indicated both -- a yes to both of those
14 questions.

15 Counsel mentions the case law. I would note that
16 in counsel's brief, she relies on two cases from the
17 Second Circuit, one case from the Eighth Circuit. All
18 three of them are 1991 or earlier, whereas the case that
19 the government relies on is Sixth Circuit case law from
20 the 2000s and the 1990s.

21 Judge, this is the type of case that an expert is
22 absolutely necessary. That's why this circuit has held
23 that it's overwhelmingly admitted, because someone like
24 Special Agent Nether is able to tell 12 average members
25 from our community why 7.5 grams is more consistent with a

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1 low to mid-level dealer, as to someone who has a crack
2 cocaine use habit, why two stimulants packaged together is
3 different than maybe one hit of the drug by an average
4 user.

5 This isn't something that is going to mislead a
6 jury. This testimony is actually going to illuminate all
7 of the details and the issues for the jury. That's why
8 the Sixth Circuit has found this to be reliable and
9 relevant.

10 Thank you, Your Honor.

11 THE COURT: Ms. Mannarino.

12 MS. MANNARINO: In his experience, working in
13 certain areas, doing certain things, he is -- he's not
14 familiar with any users who are not desperate enough to
15 have their teeth pulled. I mean, that type of testimony
16 is outrageous for the jury. He has no familiarity with
17 any of the studies. I understand and I appreciate his
18 experience on the streets of the City of Detroit, and who
19 he has encountered and why he and how he has encountered
20 them. That's who he is going after for his confidential
21 informants, he's going after desperate people.

22 He doesn't have any experience and contact with
23 the over 50 percent of the users who are full-time
24 employees and work. He doesn't have that kind of
25 experience. His experience is all with, you know, people

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1 he -- he couldn't even pass as a drug user because he
2 looks too good. He doesn't have any experience with, like
3 I said, the over 50 percent of drug users who are
4 full-time employed people.

5 THE COURT: This is a slightly different argument
6 than the one you make in your brief. The one you make in
7 your brief is that this area is an area that the jury can
8 access based on their own experience, not that Agent
9 Nether's experience and testimony is outside the factual
10 purview of this case.

11 I'm going to take this under advisement and get
12 something back to you next week.

13 MS. MANNARINO: Thank you, Judge.

14 THE COURT: Thank you.

15 And the 404(b)?

16 MS. MANNARINO: I will rely on my motion and
17 brief.

18 THE COURT: Okay. Mr. Smith, do you want to say
19 anything?

20 MR. SMITH: Your Honor, I think the only thing I
21 would outline is, again, the analysis sufficiently
22 occurred without any doubt. Mr. Roberson pled guilty to
23 these prior offenses. Is it for a proper purpose? Yes
24 the intent.

25 I think what I would outline for the Court is,

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1 again, Ms. Mannarino relied heavily on a Seventh Circuit
2 case where it talked about intent was not at issue in that
3 case and therefore it should not be admissible evidence.
4 But I'd like to highlight, in that case the defendant
5 declined any knowledge or possession of those drugs
6 entirely, and that specifically outlined that if the
7 defendant had said, well, they are mine, I just intended
8 to use them versus sell them, then intent would absolutely
9 be at issue, and that's exactly what we have here is that
10 intent is at issue because Mr. Roberson is arguing that
11 it's for personal use, and, of course, the government is
12 arguing that it's an intent to sell, Your Honor.

13 Thank you.

14 THE COURT: Okay. As with the first one, I'll
15 take it under advisement. I'll get something out to you
16 next week at the same time I rule on the exclusion of
17 expert testimony, the Daubert motion.

18 Thank you, counsel.

19 MR. SMITH: Thank you.

20 MS. MANNARINO: Thank you.

21 (Proceedings concluded 11:04 a.m.)
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C E R T I F I C A T I O N

I, Suzanne Jacques, Official Court Reporter for the United States District Court, Eastern District of Michigan, Southern Division, hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date set forth.

s/Suzanne Jacques
Suzanne Jacques, RPR, RMR, CRR, FCRR
Official Court Reporter
Eastern District of Michigan

9/27/2022
Date

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